



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL

COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

SET Case No. 001-16

-versus-

LEILA M. DE LIMA,
Protestee.

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RESOLUTION NO. 16 - 113

Upon motion of Protestant Francis N. Tolentino, the Tribunal, in Resolution 16-54 dated 18 July 2017, directed the Commission on Elections (COMELEC) to hold in abeyance the implementation of the proposed system date change of the Consolidation and Canvassing System (CCS) laptops used during the 2016 National and Local Elections until further notice from the Tribunal.

Thereafter, in Resolution No. 16-84 dated 22 November 2017, the Tribunal ordered the COMELEC to conduct a demonstration of the system date change. For this purpose, the CCS laptop of Basco, Batanes was used. The demonstration was done by Mr. Alvin V. Genota of the COMELEC's Information and Technology Department (ITD) on 25 January 2018 in the presence of party representatives. The Tribunal designated Mr. Larry U. Aumentado, Legislative Staff Officer V of Information and Communication Systems and Judicial Records Management Service (ICSJRMS), as the official IT representative of the Tribunal who was tasked to assess the actual system date change conducted by the COMELEC.

On 29 January 2018, counsel for Protestant Francis N. Tolentino filed a *Manifestation and Motion* declaring the Protestant's continuing objection to the change of system date on all other CCS laptops and moved that the Tribunal continue to restrict the change of system date until it is verified, through comparison with credible election documents, that the change of system date indeed had no effect on the election data contained in the CCS laptop from the Municipal Board of Canvassers of Basco, Batanes.

Meanwhile, Mr. Aumentado, in his written report dated 02 February 2018, recommended the need to check if all the figures in the reports shown during the demonstration of the system date change are the same with the reports produced during the 2016 elections. Thus, in Resolution No. 16-93 dated 12 February 2018, COMELEC was requested to furnish the Tribunal certified true copies of the Certificate of Canvass (COC) and Statistical Reports from the Municipality of Basco, Batanes and directed the Acting Secretary of the Tribunal to set the schedule for the printing of the reports from the CCS laptop of Basco, Batanes.

In compliance with the aforementioned Resolution, the COMELEC, through its Election Records and Statistics Department (ERSD), furnished the Tribunal a certified true copy of COC of Basco, Batanes with the information that the Statistical Reports from the said CCS laptop are not available in their office. For her part, the Acting Secretary sent a notice to the COMELEC and the parties that the printing of reports from the CCS laptop and comparison with the COMELEC copy of the COC would be undertaken on 10 April 2018.

On 06 April 2018, Protestant Tolentino filed an *Urgent Motion* alleging that he was informed by the Hearing Commissioner during the hearing for the reception of evidence on 03 April 2018 that COMELEC only intends to compare the hash codes, and therefore not in accordance with the Tribunal directive contained in Resolution No. 16-93 that the COCs and/or other relevant election documents would be compared. He, thus, requested the suspension of the proceedings scheduled on 10 April 2018.

Protestant further alleged that pursuant to Resolution No. 16-104 dated 08 March 2018, he submitted a request for the issuance of a subpoena *duces tecum* on the system/audit logs of the CCS laptops, the same CCS laptops which according to the COMELEC could not be used because of the expiration of the software, and the same CCS laptops which are under restriction for the system date change. Protestant emphasized the necessity of retrieving such system/audit logs but recognized the impasse as the same documents that he needs could only be retrieved once the COMELEC is allowed to conduct the system date change.

In the same *Urgent Motion*, Protestant mentioned that in a letter dated 28 January 2018, he requested for the unedited video footage of the system date

change demonstration conducted on 25 January 2018. He, thus, reiterated the said request with the justification that the content of the requested video would enhance the testimony of several witnesses which Protestant desires to present.

Notwithstanding Protestant's request to suspend the printing and comparison of reports from the CCS laptop, the activity was pushed through on 10 April 2018 as scheduled. Mr. Genota, who conducted the initial demonstration on the CCS system date change, printed the reports from the CCS laptop of Basco, Batanes. Several other reports were printed like the Statement of Votes by Precinct (SOVP) of Basco, Batanes for the position of Senator and the Initialization Reports which showed a zero vote for all candidates in all positions. With respect to the audit logs, it was observed that its contents would continuously change every time the CCS laptop was accessed, hence printing was discontinued. It may be worth to note, however, that the system date change was reflected in the audit logs.

Immediately after printing the COC from the CCS laptop, the same was compared with the certified true copy of the COC, which the Tribunal obtained from the COMELEC. After comparing the two (2) sets of COCs, counsel for Protestant Tolentino confirmed that the contents of the COC printed after the system date change are the same with the contents of the certified true copy of the COC earlier provided by COMELEC ERSD, including their hash codes.

To further validate Mr. Genota's declarations in his Internal Memorandum dated 24 August 2017 that the change in the system date of a CCS laptop will not affect any election data contained therein, the Tribunal requested from COMELEC a certified true copy of the SOVP of Basco, Batanes for the position of Senator that was generated by the CCS laptop during the 2016 elections. Upon receipt of the requested document on 10 May 2018, the same was compared with the SOVP that was printed on 10 April 2018. It was established that the contents of the two (2) documents, including the hash codes, were the same.

Thus, COMELEC has demonstrated to the satisfaction of the Tribunal that the proposed system date change would not in any way alter the election data contained in the CCS laptops. Lifting the Order to hold in abeyance the implementation of the proposed system date change will allow the COMELEC to

back-up the reports and election results generated during the 2016 elections. This will also allow the retrieval of the audit logs of the CCS laptops which Protestant intends to present as additional evidence which the Tribunal granted in Resolution No. 16-104 dated 08 March 2018. Protestant, however, must coordinate directly with the COMELEC for the soft copy of the said audit logs.

As to the video footage of the system date change demonstration, verification disclosed that in the letter dated 28 January 2018 addressed to Atty. James G. Allanigue, then Officer-in-Charge of the Legal Service, Protestant's collaborating counsel, Atty. Michael Angelo A. Villamor, requested that he be furnished an unedited copy of the aforesaid video footage to be used for the following purposes: "1. To validate our notes, photos and video footage of the Demonstration; 2. To augment our files on the Demonstration and on the Election Protest; and, 3. To support our continuing objection on the Demonstration and the lifting of the restriction on changing system dates on the CCS laptops." There appeared to be an inadvertence on the part of Atty. Allanigue to act promptly on the letter-request.

Be that as it may, the Tribunal finds no valid justification which necessitates the release of the video footage to the Protestant. Records would show that Protestant's counsel including several IT representatives were present and allowed to observe the system date change demonstration conducted by the COMELEC on 25 January 2018. In fact, the aforesaid letter-request dated 28 January 2018 confirms that during the demonstration, Protestant's representatives took notes, photos, as well as video footage of the proceedings.

Moreover, the video footage subject of the request was an informal and unofficial coverage taken upon the initiative of the Tribunal's ICSJRMS. Part of the ICSJRMS function is to capture Tribunal activities either on still photo or video recording to keep an account of its proceedings, whether administrative or quasi-judicial. These recordings are not intended to be released to any of the parties to an electoral protest or to the public. These are intended for the exclusive use of the Tribunal.

IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to:

1. **LIFT** the Order holding in abeyance the implementation of the proposed system date change of the CCS laptops pertaining to protested precincts;
2. **DIRECT** Protestant Tolentino to coordinate directly with the Commission on Elections for the audit logs of the CCS laptops; and
3. **DENY** Protestant Tolentino's request for an unedited copy of the video footage taken during the demonstration of the system date change of the CCS laptop conducted on 25 January 2018.

SO ORDERED.


30 May 2018.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member